TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~461.~~ 229 1/2 8

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ALFRED HUGER AND CHARLES T. LOWNDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JUNE 30, 1870.

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1 THE UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the fourth circuit, in and for the district of South Carolina:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or some of you, between the United States of America as plaintiff and Alfred Huger and Charles T. Lownds, defendant, a manifest earor hath happened, to the great damage of the said United States of America, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the

2 record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] DAN'L HORLBECK.
C. C. C. U. S. for S. C.

(Indorsed:) United States of America v. Alfred Huger & Charles T. Lowndes. Writ of error. D. T. Corbin, U. S. att'y.

OFFICE U. S. CIRCUIT COURT FOR S. C.:
Filed 8 June, 1870.

DAN'L HORLBECK,
C. C. C. U. S. for S. C.

3 The United States of America to Alfred Huger & Charles T. Lownds, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein United States of America is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at the city of Charleston, in the district of South Carolina, this eighth day of June, A. D, 1870.

GEO. S. BRYAN,
U. S. Judge Dis. of S. Ca.

4 (Indorsed:) U. S. Doc., fol. 15, 8 June, 1870. L. E. Johnson, U. S. M. Original. United States of America vs. Alfred Huger & Charles T. Lowndes. Citation. D. T. Corbin, U. S. att'y. 2 services, $4.

UNITED STATES MARSHAL'S OFFICE, *South Carolina District:*

CHARLESTON, 8 *June*, 1870.

I hereby depute W. D. Hannifin to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

CHARLESTON, *June 9th*, 1870.

I hereby certify that I executed the within process by serving the within-named defendants, viz, Alfred Huger and Charles T. Lowndes, personally with copys of the within citation on the 9th day of June, 1870.

W. D. HANNIFIN,
Special Deputy.

Sworn to before me this 9 June, 1870.

DAN'L HORLBECK,
C. C. C. U. S. for S. C.

5 UNITED STATES OF AMERICA,
South Carolina District, in 4th Circuit:

And now here at this day, to wit, on the (8th) eighth day of June, A. D. 1870, the said United States of America, plaintiffs, produced here to the said court the writ of the said United States of America for the correction of errors, commanding the record and proceedings and judgement in said cause rendered, with all things concerning the same, be transmitted to the Supreme Court of the United States, to be held in the city of Washington on the first Monday in December next, which said writ of error is as aforesaid. In pursuance whereof, and according to the form and effect of the act of Congress in such cases made and provided, a transcript of the record and proceedings, & of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

6 THE UNITED STATES OF AMERICA,
District of South Carolina, in the 4th Circuit, to wit:

At a district court of the United States for the said district, exercising circuit court powers, begun and holden at Greenville, in the district aforesaid, on the first Monday in August, A. D. 1867, before the Honorable George S. Bryan, judge of the United States for said district, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE UNITED STATES OF AMERICA
v.
ALFRED HUGER & CHARLES T. LOWNDES.

Be it remembered that heretofore, to wit, the first day of May, A. D. 1867, the said United States impleaded the said Alfred Huger and Charles T. Lowndes in an action on promises, as follows:

FOURTH CIRCUIT OF THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to the marshal of said district, greeting:

7 You are hereby commanded, without delay, to attach the

bodies of Alfred Huger and Charles T. Lowndes, wheresoever they may be found within the aforesaid district, so that you compel them to be and appear before the clerk of the circuit court of the United States of America for the aforesaid circuit and district, at the rules to be holden at Charleston, in the aforesaid district, on the first Monday in June next, to answer to the United States of America of a plea that they render to the said plaintiffs the full and just sum of thirty thousand dollars, which to the said plaintiffs they owe, and which from them they unjustly detained, and so forth; and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the first day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and in the ninety-first year of the sovereignty and independence of the United States of America.

D. T. CORBIN,
U. S. District Att'y S. C.

[L. S.] DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

8 And J. P. M. Epping, marshal of the said United States for the district aforesaid, returned said writ endorsed as follows:

U. S. MARSHAL'S OFFICE, *South Carolina District:*

I hereby depute V. J. Tobias to execute the within process, without recourse against me.

May 1st, 1867.

[L. S.] J. P. M. EPPING,
U. S. Marshal.

I hereby certify that I have delivered to the within-named defendants, Alfred Huger and Charles T. Lowndes, each a copy of the within process.

Charleston, May 2, 1867.

V. J. TOBIAS,
Dep'ty Mar.

And upon the third day of June, 1867, the said United States, by David T. Corbin, their attorney, declared in the circuit court here against the said Alfred Huger and Charles T. Lowndes in words and of the tenor following:

U. S. circuit court.

THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

9 Alfred Huger and Charles T. Lowndes, citizens of the State of South Carolina, were attached to answer to the United States of America in a plea that they render to the said plaintiffs the full and just sum of thirty thousand dollars, which to the said plaintiffs they owe, and which from them they, the said defendants, unjustly detain, and so forth.

Whereupon the said plaintiffs, by David T. Corbin, their attorney, complain that whereas the said defendants, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, at

Charleston, in the district of Charleston, and State of South Carolina, within the United States of America, and within the jurisdiction of this court, by their certain writing obligatory, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of thirty thousand dollars, to be paid to the said plaintiffs whenever they, the said defendants, should be thereunto required; which said writing obligatory was and is subject to a certain condition thereunder written, that the said Alfred Huger was appointed deputy postmaster at Charleston aforesaid, and "shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures, as deputy postmaster, to the Post Office Department, in manner and form prescribed by the Postmaster General in his several instructions to postmasters; and shall pay the balance of all moneys that shall come to his hands for the postage of whatever is by law chargeable with postag, in the manner prescribed by the Postmaster General of the United States for the time being, and shall keep safely, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise, at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and, when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers which he, as postmaster or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department."

And the said plaintiffs aver that they have commenced this their suit for the recovery of a debt or balance due to the general Post Office Department; that the said defendant, Alfred Huger, did not, on the 24th day of July, in the year of our Lord one thousand eight hundred and sixty, account, nor at any time between that day and the third day of October, in the year of our Lord one thousand eight hundred and sixty-five, nor at any time since hath he accounted, to the Post Office Department for all monies that had come to his hands as postmaster during all that time for postage stamps, stamped envelopes, bonds, notes, and drafts received for the use of the Post Office Department; that on the third day of October, in the year of our Lord one thousand eight hundred and sixty-five, there came to the said Alfred Huger five thousand five hundred and seventy-six dollars and forty-one cents ($5,576 41c.) of moneys for postage and stamps over and above the allowance made him by law; and that the said defendant, Alfred Huger, did not, on the day and in the year last aforesaid, or at any time in three months next ensuing, or at any time since, pay the said sum of five thousand five hundred and seventy-six dollars and forty-one cents, or any part thereof, to the said plaintiffs; by reason of which said breaches the said writing obligatory became forfeited, and an action hath accrued to the said plaintiffs to have and demand of them, the said defendants, the said sum of thirty thousand dollars above demanded. Yet the said defendants, or either of them, although requested so to do, have not yet paid the said sum of thirty thousand dollars above demanded, or any part thereof, to the said plaintiffs; but to pay the same to them have hitherto altogether refused, and still do refuse, to the

damage of the said plaintiffs thirty thousand dollars; and therefore they bring suit, and so forth.

And the said plaintiffs bring here into court the writing obligatory, which testifies the debt in form aforesaid, the date whereof is the day and year as above set forth.

D. T. CORBIN,
U. S. Dist. Att'y S. C.

And on the first day of July, in the year of our Lord one thousand eight hundred and sixty-seven, comes into court the said Alfred Huger, by Rutledge and Young, his attorneys, and the said Charles T. Lowndes, by McGrath and Lowndes, his attorneys, and to the declaration of the said United States file their pleas in words and of the tenor as follows:

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, to wit:

And the said Alfred Huger, by Rutledge and Young, his attorneys, comes and defends the wrong and injury when and so forth, and saith that the said plaintiff, the United States of America, ought not to have or maintain his aforesaid action thereof against him, because he saith that some time, to wit, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and sixty, the people of the State of South Carolina, in convention assembled, passed an ordinance by which the said State announced and declared that the political connexion at that time subsisting between said State and others of the United States, under the Constitution of said United States, was dissolved, and said convention repealed the ordinance of the convention of said State in the year of our Lord one thousand seven hundred and ninety-one, by which said political connexion had been established, and that, from time to time for several months succeeding thereafter, various others of the States known as Southern States, in respective convention of their said peoples, passed similar ordinances dessolving political connexion respectively with the said United States; and said States so seceding fourthwith organised a government between themselves, which was denominated the government of the Confederate States of America; and therefrom, some time, to wit, in June, in the year of our Lord one thousand eight hundred and sixty-one, all political and governmental relation between the said government of the United States and persons residing within the territorial limits of the States so seceding were disrupted and broken up and became impossible, and a war resulted between the governments of said United States and Confederate States, and said Confederate States, for a long period, to wit, for four years, maintained armies and navies, established a currency, possessed itself of the sovering power and authority over the country within its assumed jurisdiction, and excluded absolutely and entirely the authority of the said United States within the territorial limits thereof.

13

14

And thereupon, to wit, in March, in the year of our Lord one thousand eight hundred and sixty-one, the said defendant addressed sundry letters at different times to the Postmaster General of the United States, seeking instruction as to his duty in the premises, and received instructions to retain in his hands all moneys belonging to said department, and pay any drafts drawn on him, which the said defendant did. And some time in the year aforesaid, to wit, in June, in the year of our Lord one thousand eight hundred and sixty-one, when all

intercommunication became impossible between the government of the United States and any person resident within the authority of the said Confederate States, and no officer of the said United States government, treasury agent, or other agent remaining within the territorial limits of the said Confederate States, the said defendant sealed up in a sealed package all the moneys in gold, to wit, two thousand seven hundred and ninety-two $\frac{31}{100}$ dollars, belonging to the government of the United States in his hands at said period, and deposited the same for safe-keeping in the vault of the bank of Charleston, in the State of South Carolina. And subsequently, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and sixty-two, the said bank removed its specie to Columbia, in the State of South Carolina, and the said defendant, at such time, withdrew his said package containing the moneys of the United States as aforesaid, and
15 transmitted the said package by express to the branch bank of the State of South Carolina, in Columbia, of said State, and deposited the same in the vault of said bank for safe-keeping.

And subsequently, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-three, the government of the said Confederate States demanded and took from the said defendant, to the own proper use of the said government, the said package containing moneys in gold, the property of the United States, to the value, to wit, of two thousand seven hundred and ninety-two $\frac{31}{100}$ dollars. And the said defendant says also that, on the day and year aforesaid, to wit, first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain postage stamps belonging to the said government of the United States remained in his hands, which said stamps the said defendant retained until the occupation of the city of Charleston by the troops of the said United States on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, at which time the said postage stamps were transferred by the said defendant to the authorities of the Post Office Department of the said government of the United States, for which the said defendant has received credit in his account with said government of the United States.

And the said defendant also says that, on the day and year aforesaid, to wit, first day of June, in the year of our Lord one thousand
16 eight hundred and sixty-one, certain envelopes for the enclosing of letters, known as postage envelopes, remained in his hands until, to wit, the first day of March, in the year of our Lord one thousand eight hundred and sixty-three, at which time the said government of the Confederate States, exercising sovereign power, demanded of and took the same from the said defendant. And the said defendant also says that neither the said postage stamps nor envelopes of the character of the stamps and envelopes aforesaid were used by the government of the United States at any time subsequently to the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, and became thereafter of no value as postage stamps and postage envelopes.

Without this, that the said writing obligatory hath become forfeited, and the said plaintiff entitled to his said recovery in manner and form as the said declaration hath alleged; and of this the said defendant puts himself on the country.

RUTLEDGE & YOUNG,
Def'ts' Att'ys.

And the plaintiffs doth the like.

D. T. CORBIN,
U. S. Att'y.

17 And for a further plea in behalf of the said defendant, Alfred Huger, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that on or about June, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain moneys in specie, amounting in value to the value, to wit, of two thousand seven hundred and ninety-two $\frac{31}{100}$ dollars, and certain postage stamps and envelopes of some value remained in his hands belonging to the said government of the United States; and that on or about the year and day aforasaid, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain persons assembling and combining together unlawfully to dispossess the United States of all authority and power within certain territorial limits, within which said limits this defendant resided, did, on the day and year aforesaid, seize and take into their hands the entire control of said country embraced within said limits, and did overturn and destroy the authority of the United States within said limits for a long period of time, to wit, from the day and year aforesaid, to wit, the first day of June, A. D. 1861, to the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and during said period did
18 possess themselves of all property of the United States within the same with force and arms; and in the further exercise of said power which overturned and destroyed the authority of the United States within said limits for the period aforesaid, with force and arms did thereupon, to wit, on the day and year aforesaid, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-three, seize and take from his custody and control, against the will of the said defendant, the moneys and postage envelopes belonging as aforesaid to the government of the United States.

And of this the said defendant puts himself on the country.

RUTLEDGE & YOUNG,
Def'ts' Att'ys.

And the plaintiffs doth the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea in this behalf the said defendant, Alfred Huger, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that he, the said defendant, after the making of the said writing obligatory, and after he had received the moneys for postage
19 stamps, stamped envelopes, &c., in the plaintiff's said declaration mentioned, and before the commencement of this suit, to wit, on the first day of June, anno Domini 1865, and on divers days thereafter, at Charleston, in the district and circuit aforesaid, well and truly accounted for and paid the said moneys that had come to his hands as postmaster for postage stamps, stamped envelopes, bonds, notes, and drafts, as in plaintiff's declaration alleged.

And of this he puts himself on the country.

RUTLEDGE & YOUNG,
Def'ts' Att'ys.

And the plaintiffs do the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea on this behalf the said defendant, Alfred Huger, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said writing obligatory in the plaintiff's declaration mentioned is not his deed.

And of this he puts himself on the country.

RUTLEDGE & YOUNG,
Def'ts' Att'ys.

And the plaintiffs do the like.

D. T. CORBIN,
U. S. Att'y.

20 THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, to wit:

And the said Charles T. Lowndes, by Magarth & Lowndes, his attorneys, comes and defends the wrong and injury when, and so forth, and says that the said plaintiff, the United States of America, ought not to have or maintain his aforesaid action thereof against him, because he says that the said writing obligatory in the plaintiff's declaration mentioned is not his deed.

And of this he puts himself on the country.

MAGARTH & LOWNDES,
Def'ts' Att'ys.

And for a further plea in this behalf the said defendant C. T. Lowndes, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that on or about June, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain moneys in specie, amounting in value to the value, to wit, of two thousand seven hundred and ninety-two $\frac{31}{100}$ dollars, and certain postage stamps and envelopes of some value remained in the hands of the said defendant, Alfred Huger, belonging to the said government of the United States; and that on or about the year and day aforesaid,
21 to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain persons assembling and combining togather unlawfully to dispossess the United States of all authority and power within certain territorial limits, within which said limits the defendant, Alfred Huger, resided, did, on the day and year aforesaid, seize and take into their hands the entire control of said country embraced within said limits, and did overturn and destroy the authority of the United States within said limits for a long period of time, to wit, from the day and year aforesaid, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-five, and during said period did possess themselves of all the property of the said United States within the same with force and arms; and, in the further exercise of said power which overturned and destroyed the authority of the United States within said limits for the period aforesaid with force and arms, did, thereupon, to wit, on the day and year aforesaid, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, seized and take from the custody and control of the said Albert Huger and of this defendant the moneys and postage envelopes, and so

forth, belonging as aforesaid to the government of the said United States.

22 And of this the said defendant puts himself on the country.

MAGRATH & LOWNDES,
Def'ts' Att'ys.

And the pl'ff doth the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea in this behalf the said defendant, Charles T. Lowndes, by like leave of the court here for this purpose first had and obtained, says that the said plaintiff ought not to have or maintain their aforesaid action thereof against the said defendants, because he says that the said Alfred Huger, after making the said writing obligatory, and after he had received the said moneys, postage stamps, and stamped envelopes, and so forth, in the plaintiff's said declaration mentioned, and before the commencement of this suit, to wit, of the first day of June, in the year of our Lord one thousand eight hundred and sixty-five, and on divers days thereafter, and before the commencement of this suit at Charleston, in the district and circuit aforesaid, well and truly accounted for and paid the said sums of money received by him for postage stamps, stamped envelopes, and so forth, in the plaintiff's said declaration mentioned.

23 And of this the said defendant puts himself on the country.

MAGRATH & LOWNDES,
Def's' Att'ys.

And the plaintiff doth the like.

D. T. CORBIN,
U. S. Att'y.

And on the first Monday in August, A. D. 1867, comes into court the parties aforesaid, by their attorneys aforesaid, and upon motion of the said defendants by their attorneys, upon the ground that the said defendants are not ready for trial, having understood from the court the right of continuance existed at the first term, further process of and upon the premises aforesaid is, by order of the court, continued until the fourth Monday in November next.

At which said Monday in November, A. D. 1867, comes again into court the parties aforesaid, by their attorneys aforesaid; whereupon the attorney for the plaintiffs moves the court that the said cause proceed to trial, and the defendants, by their said attorneys, resist said motion, and present the following affidavit for a continuance of said case:

24 THE UNITED STATES
vs.
ALFRED HUGER AND CHARLES T. LOWNDES.

THE UNITED STATES OF AMERICA,
South Carolina District:

Personally appeared Alfed Huger, defendant in above cause, and makes oath that the witnesses he wished to examin in the above cause are residents of Charleston district, State aforesaid, and are engaged in business which commands their constant attention, and that it will be difficult, if not impracticable, to procure their attendance in Columbia,

at a specified time, to attend the trial of said cause, and that such witnesses are necessary to his defence of said case; that he has no desire to interpose any obstacle to the speedy trial of the cause, and that the object of his application, thro' his counsel, is simply to secure the trial to be had where there is a better probability of his procuring the witnesses necessary to his defence when the cause shall be called peremptorily for trial. Hence he prays the cause may be continued.

[L. S.] ALFRED HUGER.

Sworne to before me this third of Dec'r, anno Domini 1867.

R. H. RUTLEDGE,
Magistrait.

25 Upon the reading and filing of which said affidavit further process of and upon the premises aforesaid is, by order of the court, continued till the first Monday in April next.

At which said Monday in April, A. D. 1868, comes into court the parties aforesaid by their attorneys aforesaid.

Therefore it is commanded that the United States marshal in and for the district of South Carolina do summon forty-eight good and lawful men, to be drawn by ballot, according to law, to be and appear before the justices of the said court, to be holden at Charleston on the first Monday of April next, by whom, and so forth; and who neither, and so forth; to recognize, and so forth; because as well, and so forth; and the same day given to the parties aforesaid, at the place aforesaid.

And afterwards, that is to say, on the day and at the place aforesaid, before the justices aforesaid, come as well the said United States of America, by their attorneys aforesaid, as the said Alfred Huger and Charles T. Lowndes, by their attorneys aforesaid; and the jurors aforesaid, being demanded, some of them, to wit, William Kirkwood, and eleven others, come, and being drawn by ballot, according to law, and sworn of the jury aforesaid to say the truth of the within contained, do, on their oath, say that the said defendants do not owe the said
26 sum of five thousand five hundred and seventy-six dollars and forty-one cents, as the said United States of America above in their declaration have alleged against them.

Judgment ordered.

UNITED STATES OF AMERICA,
District of South Carolina, 4th Circuit:

April term, U. S. circuit court, 1870,

Hon. Geo. S. Bryan, U. S. district judge, presiding.

UNITED STATES
v.
ALFRED HUGER & CHARLES T. LOWNDES. } Order for judgement.

A verdict having been rendered for the defendant in the said cause, now, on motion of D. T. Corbin, U. S. att'y—

Ordered, That the clurk of the court do enter up judgment final upon said verdict.

Nunce pro tunc, 4th May, 1870.

(Signed) GEO. S. BRYAN,
U. S. Judge for Dist. of S. C.

27 *Exception to order for judgement.*

UNITED STATES OF AMERICA
vs.
ALFRED HUGER.

The defendant Alfred Huger excepts to the ruling of his honor in ordering the judgment in this case, after the lapse of time which has occurred since the rendering of the verdict, to be entered up nunc pro tunc, because such an order is admissible only when the failure to enter up judgment in due time has been caused by the act of the court, which has not been pretended in this instance, and is otherwise against law and the uniform practice of the courts.

RUTLEDGE & YOUNG,
Per Alfred Huger.

This exception accepted.

GEORGE S. BRYAN, *U. S. Judge.*

4th May, 1870, dist. of S. C.

28 *Order.*

UNITED STATES OF AMERICA,
District of South Carolina:

United States circuit court, fourth circuit, April term, 1870.

Hon. George S. Bryan, judge presiding.

UNITED STATES OF AMERICA
v.
ALFRED HUGER & CHARLES T. LOWNDES.

On motion of D. T. Corbin, U. S. attorney—
Ordered, That the order made in this case on the 4th day of May, A. D. 1870, by which it was ordered that the clerk of the court do enter up judgment final upon said verdict "nunc pro tunc" be amended by striking out the words "nunc pro tunc."

GEORGE S. BRYAN,
U. S. Judge Dist. S. C.

25TH MAY, 1870.
D. T. CORBIN, *U. S. Attorney.*

29 *Paper filed.*

UNITED STATES, *So. Carolina District:*

Circuit court.

THE UNITED STATES
vs.
ALFRED HUGER AND CHA'S T. LOWNDES.

On the 1st day of May, A. D. 1868, a general verdict was found for the defendants; and thereupon, on the 4th day of May, A. D. 1870, came the United States by their attorney, D. T. Corbin, (the counsel of the defendants having been duly notified of the motion,) and moved that judgment be entered upon said verdict; and, in pursuance of said

motion, it was ordered "that the clerk of the court do enter up judgment final upon said verdict nunc pro tunc."

4th May, 1870.

(Signed) GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

And on the same day, to wit, 4th May aforesaid, the clerk of said court proceeded to execute, and did execute, said order, and entered up final judgment in said case, and marked the same officially, "Judgment signed April term, viz., 25th July, A. D. 1868, under order of the 4th May, 1870."

30 The defendant, Alfred Huger, thro' his counsel, on the same day, viz, 4th May, 1870, excepted to the ruling of his honor, Judge Bryan, upon several grounds now of record in said cause, and said exceptions were accepted and certified by the court.

That some time afterward, to wit, on the 25th day of May, A. D. 1870, the defendant Alfred Huger not having been notified of the intended motion, nor his counsel, and neither of them being present, the following order was made in said cause:

"On motion of D. T. Corbin, U. S. att'y—

"*Ordered*, That the order made in this case on the 4th May, 1870, by which it was ordered that the clerk of the court do enter up judgment final upon said verdict nunc pro tunc be amended by striking out the words 'nunc pro tunc.'"

(Signed) GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

25TH MAY, 1870.

On the same day, the 25th May, 1870, the clerk of the court, Daniel Horlbeck, esq., wrote across the face of the judgment entered up on 4th May, A. D. 1870, the following statement, to wit:

"Erroneously entered, and to be entered at the rising of the April term of the circuit court. Vide order of date 25th May, 1870.

(Signed) "DANIEL HORLBECK.
"*C. C. C. U. S. for S. C. D.*"

31 And shortly afterwards, to wit, on 26th May, year aforesaid—the defendant Alfred Huger having been informed by the advertisement in the public prints of the city of Charleston of the proceedings of the said court that an order in the above case had been amended; and having subsequently ascertained that that amendment consisted in an order requiring the words "nunc pro tunc" to be stricken out of the order of the 4th of May, 1870; and, having further ascertained that the clerk of the court had written across the face of the final judgment entered up in pursuance of the order to that effect, on the 4th May aforesaid, the statement above recited and set forth—comes the said defendant Alfred Huger, and excepts through his attorneys, Rutledge & Young, to the said proceedings as contrary to law and the uniform practice of of the court.

(Signed) RUTLEDGE & YOUNG,
Att'ys for Def't.

The above statement accepted as a true statement of the facts and to perfect the record.

(Signed) GEORGE S. BRYAN,
U. S. Judge Dist. So. Ca.

1ST JUNE, 1870.

32 This paper filed without notice to, and in the absence of, the attorney of the United States.

(Indorsed:) The United States vs. Alfred Huger & C. T. Lowndes. Record of proceedings.

33 *Judgment.*

UNITED STATES OF AMERICA, *District of South Carolina:*

In fourth circuit, April term, 1870.

UNITED STATES
vs.
ALFRED HUGER & CHARLES T. LOWNDES.

Therefore it is considered that the said Alfred Huger and Charles T. Lowndes, defendants, do recover against the said United States of America the sum of thirty-one dollars and twenty-five cents, ($31 25 cts.,) costs and charges aforesaid, to said Alfred Huger and Charles T. Lowndes by the said court now here with their assent adjudged; which said thirty-one dollars and twenty-five cents, costs and charges, amount in the whole to thirty-one dollars and twenty-five cents, ($31 25 cts.;) and be the said defendants in mercy, &c.

Judgment final signed and entered this 4th day of June, 1870.

[SEAL.] DANIEL HORLBECK,
C. C. C. U. S.

NOTE.—Judgment entered pursuant to orders of May 4th and May 25th, 1870, above recited.

D. H., *C. C. C. U. S.*

MEMORANDUM.—Before the jurors withdrew from the bar of the court here, the said United States of America, by their attorney aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in the form following, to wit:

34 *Plaintiffs' bill of exceptions.*

1868, April term.

THE UNITED STATES
v.
ALFRED HUGER AND CHARLES T. LOWNDES.

At the trial of the cause, the plaintiffs, to maintain and prove the issue on their part, gave in evidence the following bond and the account following the same:

"Know all men by these presents that we, Alfred Huger, of Charleston, in the district of Charleston, State of South Carolina, C. T. Lowndes and J. L. Petigru, of the same district, and State, and city, are held and firmly bound unto the United States of America in the just and full sum of thirty ($30,000) thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these present.

"In witness whereof we have hereunto subscribed our names and

affixed our seals this 24th day of April, in the year of our Lord one thousand eight hundred and sixty.

"The condition of this obligation is such, that whereas the above-bounden Alfred Huger was appointed deputy postmaster at Charleston aforesaid on the 12th day of March, 1860, which said appointment was, on the said 12th day of March, 1860, confirmed by the Senate of
35 the United States: Now, if the said Alfred Huger shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months or oftener, if thereto required, render accounts of his receipts and expenditures as deputy postmaster to the Post Office Department, in the manner and form prescribed by the Postmaster General of the United States for time being, and shall keep safely, without loaning, useing, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession or custody, till the same is ordered by the Postmaster General to be transferred or paid out; and, when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers which he, as postmaster or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post
36 Office Department, then the above obligations shall be void; otherwise of force.

[L. S.] "ALFRED HUGER.
[L. S.] "C. T. LOWNDES.
[L. S.] "J. L. PETIGRU.

"Witness: EVAN EDWARDS.

"STATE OF SOUTH CAROLINA, *City of Charleston, ss:*

"I hereby certify that C. T. Lowndes and J. L. Petigru, the sureties above named, who have signed the foregoing bond, are *severely* responsable, and sufficient to insure the payment of the entire penalty named therein.

"Witness my hand this 24th day of April, A. D. 1860.

[L. S.] "CHARLES MACBETH, *Mayor.*

"By the mayor:

"JOHN R. HORSEY,
"*Clerk of Council.*

"STATE OF SO. CA., *District of Charleston, ss:*

"C. T. Lowndes and J. L. Petigrue, sureties, being duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, and that his place of residence is correctly stated
37 therein; that he is a freeholder of said State; and that he is worth double the sum of the penalty of the within bond, over and above all debts and liabilities existing against him.

"C. T. LOWNDES.
"J. L. PETIGRU.

"Subscribed and sworne before me this 24th day of April, 1860.

"EVAN EDWARDS,
"*Not Pub. and ex-off. Justice of the Peace.*

"OFFICE OF THE AUDITOR OF THE TREASURY
"*For the Post Office Department.*

"I, Hugh J. Anderson, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct copy of the original bond of Alfred Huger, late postmaster of Charleston, in the State of South Carolina, now on file in this office.

"In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office, at the city of Washington, this 15th day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] "H. J. ANDERSON, *Auditor.*"

38 "*Alfred Huger, late postmaster at Charleston, South Carolina, in account with the United States.*

"DR. CR.

	To balances due on his quarterly returns as P. M. from July 1st to Sep. 30th, 1860	$ c. 7,768 45	1869. July	14th	By am't deposited	350
				21st	Ditto	500
				28th	Ditto	500
			Aug.	4th	Ditto	800
1860. Dec.	21st draft on H. Haynesworth	150 00		11th	Ditto	500
				18th	Ditto	500
	" ac. from Oct. 1st to Dec., 1860	9,796 58		25th	Ditto	550
			Sep.	1st	Ditto	300
				8	Ditto	1,000
				15th	Ditto	400
				22nd	Ditto	500
				29th	Ditto	1,000
			Oct.	6th	Ditto	900
				13th	Ditto	700
				20	Ditto	500
				27th	Ditto	650
			Nov.	3d	Ditto	1,050
				10th	Ditto	500
				17th	Ditto	800
				24th	Ditto	700
			Dec.	31st	Ditto	850
				8th	Ditto	400
				15th	Ditto	600
				22nd	Ditto	800
				29th	Ditto	300

39 *Statement*—Continued.

			Dec.	31st	Ditto	700
			Oct.	11th	draft favor Jos. Plowden	28 88
			Dec.	12th	stamps	7 33
				31st	ships and steamb't letters suspended, 3d q'r, '60	19 30
			1861. Jan.	5th	amount deposited	1,000
				12th	Ditto	200
				19th	Ditto	600
				26th	Ditto	1,000
			Feb.	2nd	Ditto	900
				9th	Ditto	500
				16th	Ditto	600
				23rd	Ditto	500
			Mar.	2nd	Ditto	1,000
				14th	draft favor— A. H. T. Simmons	67 77
				15th	J. F. Drake	66
				do.	J. S. Davis	74 51
				16th	C. Brumley	132
				16th	J. C. Coan	67 78
				16th	J. M. Partlon	70 22
				18th	C. C. McKinney	74 75
				18th	J. Leaird	55 28
				18th	H. Dreher	38 25
				18th	J. Russell	38 12
				18	Jno. Smith	34 35

40 *Statement*—Continued.

			Mar.	18th	J. R. Forbes	40 26
				18th	D. Rush	34 29
				18th	S. C. McWhorter	13 75
				18th	D. Sauls	50
				18th	T. J. Damall	14 51
				18th	J. M. Vandiver	32 05
				18th	T. C. Austin	23 50
				18th	W. H. Bohnar	39 14
				19th	L. N. Poole	58
				21st	A. Cornelius	27 27
				21st	J. W. Johnson	66
				21st	J. T. Bennett	75
				21st	W. Carter	41 03
19			Mar.	22nd	B. Washbourne	11 15
				22nd	J. S. Burroughs	138 75
				22nd	J. C. Addison	41 31
				22nd	R. R. Saneter	46 25
				22nd	A. B. Wright	34 52
				22nd	J. W. Thomas	42 25
				22nd	Isaac Lindsay	52 85
				22nd	T. J. Shell	35 52
				22nd	O. Talbert	57 51
				22nd	J. E. Waddy	75
				22nd	J. G. Ingraham	50
				26th	E. W. Mosby	135 44
				27th	J. J. Mize	27 95
					T. M. McRae	36 71
					B. B. Mosby	78 81

41 *Statement*—Continued.

			Mar.	28th	J. W. Johnson	66
				28th	S. P. Harris	133
				28th	F. S. Hunt	133
				28th	B. T. Edwards	133
				28th	H. G. Duffies	58
				28th	L. F. McMills	66
				28th	A. J. Connor	66
				28th	A. C. Bristow	133
				30th	R. Mayo	125
	To ac. from Jan. 1st to Mar.			30th	W. D. Locke	66
	31st, 1861	$9,405 99		30th	L. S. Moore	265 85
	April 1st to June 30th, due		Ap'l		J. L. Young	70 45
				8th	C. M. Terry	45 21
				8th	John Griffin	82 27
				8th	C. Williams, treasurer of N. C. R. R. Co	383 57
'61. June 30th	"stamps on hand and unaccounted for	$10,647 72		15th	H. S. Duffies	58
				15th	J. F. Drake	68
				15th	A. J. Connor	68
				15th	Clinton Ward	298 91
			May	1st	L. N. Pool	59
				1st	M. D. Locke	68
			May	1st	E. S. Moody	59
				10th	J. D. Frierson	199 78
				17th	H. D. Duffins, rt. ag't	59
				18th	W'm M. Campbell	30 30

42 *Statement*—Continued.

				18th	Dan'l Sausbury	20 82
				22nd	Cha's Williams, treas	500
				25th	John M. Mison	50
				25th	J. T. Barnes	191
				25th	D. A. Boyd	150
				25th	David Sauls	50
				25th	A. W. T. Simmons	125
				31st	J. T. Conway	65 93
			1865.			
			Oct.	3rd	stamps returned, 3d qr., 1865	3,453 11
					balance	$5,576 41
		$37,768 74				$37,768 74
	To balance due U. States, interest from Oct. 3rd, 1865	5,576 41				

"OFFICE OF THE AUDITOR OF THE TREASURY
"*For the Post Office Department.*

"I, Hugh J. Anderson, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct statement of the account of Alfred Huger, late postmaster at Charleston, in the State of South Carolina, as audited and adjusted in this office.

"In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office, at the city of Washington, this
42½ 15th day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] "H. J. ANDERSON, *Auditor.*"

The plaintiffs also offered to prove that James L. Petigru, one of the parties to the bond of the defendant Alfred Huger, deceased on the day of March, A. D. 1863, and the fact was admitted by the defendants as proven.

And the defendants, to maintain and prove the issue on their part, gave in evidence—

That defendant Huger was first appointed deputy postmaster at Charleston, South Carolina, by President Jackson, in 1832, and has continuously held the office from that time up to May 31st, 1861, having been reappointed to the said office by the successive Presidents of the United States. He received his last appointment on the 12th day of March, 1860, for four years, duly qualified under said appointment, and entered upon and discharged the duties of said office till June 1st, 1861. That he then ceased to act as deputy postmaster of the United States at Charleston aforesaid, received and accepted an appointment to the same office from the government of the Confederate States. He duly qualified under said appointment, taking the oath of allegians to the confederate government, and entered upon and continued to discharge the duties thereof till the evacuation of Charleston, South Caro-
43 lina, by the confederate forces in February, 1865.

That some time in February, 1861, the assistant treasurer at Charleston, South Carolina, refused to receive the deposits of public moneys of said defendant, (proceeds of said office,) as required by law, and said Huger addressed a letter to the Postmaster General of the United States asking instructions relative thereto, and received the following reply:

"POST OFFICE DEPARTMENT, FINANCE OFFICE,
"*March 12th*, 1861.

"SIR: Your letter of the 9th inst., informing me that the ass't treasurer at Charleston declines receiveing any further deposits for the service of this department, is received. You will therefore report on the receipt of this, by letter, the amount of your indebtedness to the department. You will retain the proceeds of your office in hand to meet the department's drafts.

"At the close of each month you will ascertain, as near as may be, the nett proceeds of your office for the month, and carry the amount to the credit side of your general account with the United States for the service of the Post Office Department, and transmit to the Third Ass't Postmaster General a copy shewing all the moneys received and paid by you during the month. The balance struck on this account
44 at the end of each month must be carried forward to the account for the month succeeding.

"With each monthly transcript of your general account you will transmit all the drafts paid by you during the month, having first crossed them with strong black lines, so as effectually to cancel them, without materially impairing their legibility. Your monthly statements should be addressed to 3rd Ass't Postmaster General, separate and apart from all other matter, except the cancelled drafts.

"Very respectfully, your ob't serv't,

(Signed) "A. N. ZEVERLY,

"*3rd Ass't P. M. Gen'l.*

"ALFRED HUGER, Esqr., *Postmaster, Charleston, S. C.*"

In pursuance of said letter of instructions said Huger did retain in his possession and custody the proceeds of his office to meet the department's drafts.

Said defendant had, at the end of May, 1861, of the proceeds of his said office, of the property of the United States, between $2,200 and $2,400 in gold, $3,453 11 in postage stamps, and about $700 in stamped envelopes.

That the State of South Carolina, in the month of December, 1860, dissolved its connexion with the United States, and some time
45 subsequently, early in 1861, entered into a union with divers other Southern States, which union was styled the Confederate States of America. That a war ensued between the United States and the said Confederate States, and, some time in April, 1861, the forces of the said Confederate States took possession of the city of Charleston, South Carolina, and all the forts and arsenals of the United States, and expelled by force the soldiers and representatives of the United States Government.

That from said time forward, without interruption, till February, 1865, the armies and representatives of the Confederate States government held and possessed complete controle of the said city of Charleston, and said defendant Huger was, during said period, wholly subject to the power thereof. That the government of the United States could not and did not afford said Huger any protection against the authority of the said Confederate States.

That some time in June or July, 1861, defendant Huger reported, by order of the confederate postmaster general, the condition of his accounts with the government of the United States, and what property of the United States still remained in his possession.

The regular mail communications ceased between Charleston and Washington in May, 1861. The said gold was, in June following,
46 sealed up in a package and deposited in the Bank of Charleston, at Charleston, South Carolina, for safe-keeping, where it remained safely till some time in 1863, when it was sent to the branch bank of the State of South Carolina for safe-keeping.

That soon after being sent to Columbia, South Carolina, it was demanded of said Huger by the postmaster general of the Confederate States, and he, said Huger, thereupon ordered the said bank to deliver it up to the confederate government; which the said bank accordingly did.

That said demand by the confederate government for said gold came to said Huger through the mail, and though it was unaccompanied by any threat or suggestion of force, yet said Huger felt he was surrounded by a power he could not resist, and, although he knew the gold to be the property of the United States, he felt compelled to give the order for the transfer of it to the Confederate States, which he then did. That

some time after the said order for the transfer he received notice from the Confederate States government that said gold had been received by them.

That the said stamped envelopes were demanded by the Confederate government some time in 1863, by an order received through the mail, and were forwarded accordingly to the confederate post office department, at Richmond, Virginia.

That of the postage stamps there were retained safely in the
47 custody of said Huger, $3,453 11 *dollars*, till the evacuation of Charleston, in February, 1865, and then the same were taken and received by the United States government, and the same were credited by the Post Office Department in the defendant's account.

And the testimony on both sides being closed, the plaintiff prayed the court to instruct the jury in the following particulars:

"1st. That the defendant Huger having accepted the office of deputy postmaster a Charleston, South Carolina, on the 12th day of March, 1860, and bound himself to keep safely all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same was ordered by the Postmaster General to be transferred or paid out; and, moreover, faithfully account for all moneys, postage stamps, stamped envelopes, &c., &c., which he, as postmaster or as agent and depositary, should receive for the use and benefit of the Post Office Department; and, having entered upon the duties of that office, and continued therein up to the 31st May, A. D. 1861, and received the salary and commissions allowed by law therefor, must be held strickly to the undertaking in his bond. And if the evidence shows that during his continuance in said office as postmaster there came to his hands property of the United States to the amount of $5,576 41 which he has not accounted for or paid over, as required by the Postmaster General,
48 then a verdict for said amount, with interest at the rate of six per cent. from the date of the default, must be rendered for the plaintiffs.

"2nd. That if the defendant Huger did, in pursuance of the order of John A. Reagan, postmaster general of the Confederate States, report to that officer the state of his accounts with the United States, and the property thereof in his possession, and subsequently, upon the order of the said John A. Reagan or his assistants, forward and direct to be forwarded to him all or any portion of said property, it is not a proper accounting to the government of the United States therefor, and does not bar the right of the United States to recover judgment against said Huger and his sureties for the same.

"3rd. That said Confederate States or government, of which John A. Raugan was an officer or agent, was an unlawful combination of divers persons, citizens of the United States, engaged in unlawful insurrections and rebellion against the government of the same, and within the territory thereof, unlawfully usurping the powers of government, and as such it continued to be, unrecognized as having any lawful existence, till suppressed by the military power of the United States; hence neither said confederate government nor its officers or agents could originate any legal action or issue any order which the defendant Huger was bound to obey.

49 "4th. That this is not strictly a case to which the common law of agency or bailment applies, but a case of contract between the United States government and the defendants as equal contracting parties, and that the rights of the one and the obligations of the other at

most were only suspended, and not impaired by the late war; that the war having ceased, and physical obstructions removed, the defendant must respond to the requirements of his bond.

"5th. That the surrender of the gold and postage envelopes belonging to the United States by defendant Huger on the order of the agent of the confederate government, received by him through the mails, and which contained no threat or suggestion of compulsion, was not a surrender or yielding up of the government property under the pressure of irresistable force."

But the court rejected each and every of the instructions prayed for by the plaintiffs, and in lieu thereof instructed the jury as follows:

As to the first instructions prayed for, the court said:

"I do not so instruct you. I instruct you that if because of the war and the belligerent condition in which the defendant found himself he was unable to comply with his contract, then he was absolved. That bond was entered into in a condition of things totally different from that in which he found himself, a condition of things which rendered it morally and physically impossible for him to comply with the literal fulfillment of the condition of the bond."

As to the second instruction prayed for, the court said:

50 "I instruct you that his not accounting, under the circumstances, when the subject of a military power which he could not control, for public property of the United States in his possession, was not inconsistent with the obligation of his bond, because done in submission to a military power overriding any will he might otherwise exercise."

As to the third instruction prayed for, the court said:

"I instruct you, gentlemen, that in so far as 'that said Confederate States was an unlawful combination of divers persons, citizens of the United States, engaged in unlawful insurrections and rebellion against the government of the same, and within the territory thereof, unlawfully usurping the power of government, and as such it continued to be, unrecognized as having any lawful existence, till suppressed by the military power of the United States,' &c., I give the instruction, but do not give the conclusion—that is, 'that the officers or agents of the confederate government could issue any order which the defendant Alfred Huger was bound to respect.' I instruct you, the United States having ceded to the Confederate States (so called) the authority of a belligerent, the power incident to the authority of a belligerent was conceded to the Confederate States, and they had such right to give an order which it was not possible for the postmaster or assistant postmaster here to dispute. They had the authority of a belligerent, and it
51 was not within the competency of the postmaster to dispute the regular exercise of that authority."

As to the fourth instruction prayed for, the court said:

"I am further asked to instruct you 'that this is not strictly a case to which the common law of agency or bailment applies, but a case of contract between the United States government and the defendant as equal contracting parties. and that the rights of the one and obligation of the other, at most, were only suspended and not impaired by the late war; that the war having ceased, and physical obstructions removed, the defendant must respond to the requirements of his bond.' I instruct

you that this bond implies on the one side and the other a condition of things which renders it possible on either part—that is, that the United States on its part shall secure to the defendant that condition of things in which it was possible for him to execute the bond; and if it does not secure him that condition of things, then he is not to be held to an impossibility. He cannot be called upon to discharge an obligation which it was impossible for him to discharge by a *a* condition of things which put it out of his power to meet his obligations, and in which the United States had left him helpless when its obligations was to have helped him. When the United States was unable to perform its own part, and was helpless to help him to discharge his obligation, he is not
52 answerable for the failure to discharge that obligation. The obligation is at an end, and he is discharged."

As to the fifth instruction prayed for, the court said:

"I charge you, gentlemen, that that order from a government essentially military, and from the nature of things a military despotism, was the expression of a force that could not be resisted, and as peremptory, of necessity, as if the bayonet was at his throat. It was a command, and the command carried with it irresistable power. I would be understood as negativing the instructions asked for by the district attorney, emphatically. I think the negative of this instruction as ruling the very essence of the case—that is, that the defendant living on the soil in such a contest in which such powers were engaged, the one struggling for existence and the other for the rescue of its rightful authority; the one contending for the establishment of independence, and the other for the re-establishment of rightful constitutional rule and national integrity. In such a tremendous contest a party beligerent making a demand upon any inhabitant or citizen on its soil, made a demand which carried with it the necessity of instant obedience; and the refusal to obey which, if it did not bring harm to the party who might oppose it, would have promptly been executed by the government itself. I repeat, the execution of the demand, if not executed by the party himself, would be excuted instantly by the government; and if the property were not surrendered, it would be taken. The refusal to surrender would have been idle, certainly, and, at the same time, might have been dangerous."

53 To the granting of which said instructions, and to the refusal of those prayed for by the plaintiffs, the plaintiffs then and there, and before the jury had withdrawn from the bar, did except, and, inasmuch as the matters aforesaid do not appear by the verdict of the jury, prayed the court to sign and seal his bill of exceptions, which is accordingly done this first day of May, 1868.

[L. S.]

GEO. S. BRYAN,
U. S. Judge Dist. of S. C.

I certify the foregoing is a true copy of the record in the above-named case.

June 8th, 1870, Charleston, S. C.

DAN'L HORLBECK,
C. C. C. U. S. for So. Car.

(Indorsement on cover:) No. 461. The United States, plaintiffs in error, vs. Alfred Huger and Charles J. Lownds. So. Carolina C. C. U. S. Filed 30th June, 1870.

REC. 461—3

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
ALFRED HUGER and CHARLES T. LOWNDS. } No. 229.

In error to the Circuit Court of the United States for the District of South Carolina.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
ALFRED HUGER and CHARLES T. LOWNDS. } No. 229.

In error to the Circuit Court of the United States for the District of South Carolina.

STATEMENT.

This is a writ of error to a judgment rendered by the circuit court of the United States for the district of South Carolina, in a suit for the recovery of an alleged balance of $5,576 41, brought by the United States against Alfred Huger and Charles T. Lownds, the defendants in error, as principal and surety on a postmaster's bond conditioned as follows:

"That whereas, the above bounden Alfred Huger was appointed deputy postmaster at Charleston aforesaid, on the 12th day of March, 1860, which said appointment was, on the said 12th day of March, 1860, confirmed by the Senate of the United States: Now, if the said Alfred Huger shall well and truly execute the duties of said office according to law, and the instructions of the Postmaster General, and faithfully, once

in three months or oftener, if thereto required, render accounts of his receipts and expenditures as deputy postmaster to the Post Office Department, in the manner and form prescribed by the Postmaster General of the United States for the time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession or custody, till the same is ordered by the Postmaster General to be transferred or paid out; and, when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers, which he, as postmaster or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department, then the above obligation shall be void; otherwise, of force."

The declaration, which was filed on the 3d of June, 1867, assigned as breaches of the above condition, "that the said defendant, Alfred Huger, did not, on the 24th day of July, in the year of our Lord, 1860, account, nor at any time between that day and the 3d day of October, in the year of our Lord, 1865, nor at any time since hath he accounted, to the Post Office Department, for all moneys that had come to his hands as postmaster during all that time for postage stamps, stamped envelopes, bonds, notes, and drafts received for the use of the

Post Office Department; that on the 3d day of October, in the year of our Lord 1865, there came to the said Alfred Huger $5,576 41 of moneys for postage and stamps over and above the allowance made him by law: and that the said defendant, Alfred Huger, did not, on the day and in the year last aforesaid, or at any time in three months next ensuing, or at any time since, pay the said sum of $5,576 41, or any part thereof, to the said plaintiffs," &c. (Printed Record, pp. 3 and 4.)

Defendants pleaded separately—each putting in special pleas, together with a common traverse, and the plea of *non est factum*, on all of which issue was tendered and joined; and, afterwards, at the April term, 1868, of the court below, the cause came on for trial, and resulted in a verdict for the defendants. (*Ibid.*, pp. 5 to 10.)

At a subsequent term, to wit, on the 4th of May, 1870, it appearing that judgment had not been entered upon the verdict mentioned, the court, on motion of the attorney for the United States, ordered the clerk to enter up judgment *nunc pro tunc*. Counsel for the defendant, Huger, thereupon excepted to the order of the court, on the ground that after the lapse of time which had occurred since the rendition of the verdict, an entry *nunc pro tunc* is admissible only where the failure to enter up judgment in due time had been caused by the act of the court, which was not pretended in this instance, and that the order is otherwise against law and the uniform practice of the courts. However, on the 25th of May, 1870, and during the same term, it

was ordered by the court, on motion of the United States attorney, that the previous order be amended by striking out the words "*nunc pro tunc.*" (*Ibid.*, pp. 10 11.)

Final judgment was accordingly signed and entered on the 4th of June, 1870, pursuant to the orders of the 4th and 25th of May, 1870, above referred to. (*Ibid.*, p. 13.)

From a paper signed by counsel for the defendant, Huger, which was filed in the court below without notice to and in the absence of the attorney for the United States, but which was accepted by the court as a true statement of the facts and to perfect the record, it appears that on the 4th of May, 1870, the clerk proceeded to execute, and did execute, the order of that day, by making the following entry: "Judgment signed April term, viz, 25th July, A. D. 1868, under order of the 4th May, 1870;" that neither the said defendant nor his counsel had notice of the intended motion for the subsequent order of the 25th of May, 1870, and that neither of them was present when that order was made; that on the same day, the 25th of May, 1870, the clerk wrote across the face of the entry made on the 4th of May, as aforesaid, "Erroneously entered, and to be entered at the rising of the April term of the circuit court. Vide order of date 25th May, 1870." (Here follows the clerk's official signature.) The paper then proceeds to state that afterwards, to wit, on the 26th of May, 1870, came the said defendant and through

his attorneys excepted to the said proceedings, as contrary to law and the uniform practice of the court. (*Ibid.*, pp. 11 to 13.)

A bill of exceptions was taken by plaintiffs, which sets forth that at the trial of the cause, the testimony on both sides being closed, counsel for plaintiffs prayed certain instructions to be given by the court to the jury. But the court rejected each of the instructions thus prayed for, and, in lieu thereof, gave other instructions to the jury; to the giving of which, and to the refusal of the former, exception was taken. (*Ibid.*, pp. 13 to 21.)

ARGUMENT.

I.

A preliminary question apparently arises in this case, touching the regularity of the judgment as signed and entered. It will be found on examination, however, that no irregularity exists, or at least none that can be regarded as fatal.

Clearly the plaintiffs had a right to have the judgment signed to enable them to bring a writ of error.

Thus, in Dyer, 194 *b*, in the case of Fortescue et al. *vs.* Maynard et al., it is said that "although the defendant for whom the verdict passed will not pray judgment, yet the plaintiff may pray it to attaint the verdict." See, likewise, Viner's Abr., title "Judgment," (A,) 2.

So in Greene *vs.* Cole, 2 Saund., 253, where the jury found a verdict for the defendant, and he would not

pray judgment, it was ruled "that the court ought to give judgment at the prayer of the plaintiff, for otherwise the plaintiff would be deprived of his remedy by writ of error to redress his grievance by the judgment, admitting it was erroneous." Also, see Tomlin's Law Dict., tit. "Judgment," II

And no advantage can be taken of the circumstance that the motion to amend the *nunc pro tunc* order for judgment was made and passed upon without notice to the defendants, since, under the circumstances, the motion could not be gainsayed, and a notice would have availed nothing.

II.

But we submit that there is error in the instructions of the court.

1. The court erred in instructing the jury "that if, *because of the war and the belligerent condition in which the defendant found himself*, he was unable to comply with his contract, then he was absolved," &c. (Record, p. 20.)

The error in this instruction is, that it lays down, as a matter of excuse for non-performance, what in point of law is clearly unavailable for that purpose. It has been held by this court, that if a party by his contract charge himself with an obligation possible to be performed, he must make it good, unless its performance is rendered impossible by the act of God, the law, or the other party, and that unforseen difficulties, however

great, will not excuse him. (Dermott *vs.* Jones, 2 Wall., 7) Numbers of persons throughout the South, because of the happening of the war, became unable to comply with their pecuniary engagements, but it will not be contended that they were thereby released from them.

2. The court erred in instructing the jury "that his (the defendant's) not accounting, under the circumstances, when the subject of a military power which he could not control, for public property of the United States in his possession, was not inconsistent with the obligation of his bond, because done in submission to a military power overriding any will he might otherwise exercise." (Record, p. 20.)

The circumstances referred to in this instruction must be taken to be such as were presented by the evidence given in by the defendant, the substance of which is set forth in the bill of exceptions, (Record, pp. 17 to 19.) These circumstances are, that in April, 1861, the military forces of the so-called Confederate States took possession of the city of Charleston, &c.; that from that time forward, without interruption, till February, 1865, these forces had complete control of said city, and the defendant was, during this period, wholly subject to their power; that in June or July, 1861, defendant reported, by order of the Confederate Postmaster General, the condition of his accounts with the United States, and what property of the latter remained in his possession; that sometime in 1863 defendant sent a certain package of gold, belonging to the United

States, to the branch bank at Columbia for safe-keeping; soon after which it was demanded of him by the Postmaster General of the Confederate States, whereupon the defendant ordered said bank to deliver the gold up to the Confederate Government, which it did: that the demand from the Confederate Government for the gold came to the defendant *through the mail*, and was *unaccompanied by any threat or suggestion of force, &c.*

Now, if the demand of the Confederate authorities was "unaccompanied by any threat or suggestion of force," it is clear that the court below erred in stating that under such circumstance the failure of the defendant to account was not "inconsistent with the obligation of his bond." This court, in United States *vs.* Keehler, 9 Wallace, 87, observed: "We cannot concede that a man, who, as a citizen, owes allegiance to the United States, and as an officer of the Government holds its money or property, is at liberty to turn over the latter to an insurrectionary government, which only demands it by ordinances and drafts drawn on the bailee, but which exercises no force or threat of personal violence to himself or property in the enforcement of its illegal orders."

3. The court erred in instructing the jury that "the United States having ceded to the Confederate States (so-called) the authority of a belligerent, the power incident to the authority of a belligerent was conceded to the Confederate Statas, and they had such right to

give an order which it was not possible for the postmaster or assistant postmaster here to dispute. They had the authority of a belligerent, and it was not within the competency of the postmaster to dispute the regular exercise of that authority."—(Rec., p. 20.)

The fact assumed in this instruction, viz., that the United States ceded to the insurrectionary States the *authority* of a belligerent, or indeed any authority whatever, is not only historically untrue, but the doctrine laid down to the jury, in connection therewith, is in direct conflict with the law as already declared by this court. Thus, in United States *vs.* Keehler, cited above, the court says: "The whole confederate power must be regarded by us as a usurpation of unlawful authority, incapable of passing any valid laws, and certainly incapable of divesting, by an act of its Congress or an order of one of its departments, any right or property of the United States."

4. The court erred in instructing the jury "that this bond (the bond sued on) implies on the one side and the other a condition of things which renders it possible on either part—that is, that the United States, on its part, shall secure to the defendant that condition of things in which it was possible for him to execute the bond; and if it does not secure him that condition of things, then he is not to be held to an impossibility. He cannot be called upon to discharge an obligation which it was impossible for him to discharge by a condition of things which put it out of his power to meet his obliga-

tions, and in which the United States had left him helpless when its obligation was to have helped him. When the United States was unable to perform its own part, and was helpless to help him to discharge his obligation, he is not answerable for the failure to discharge that obligation. The obligation is at an end, and he is discharged." (Rec., p. 21.)

There is nothing in the condition of the bond, from which, by implication, the United States can be regarded as having incurred any obligation to "secure to the defendant" the future possibility of performing his contract. Yet the instruction just quoted proceeds on the ground that such an obligation existed, and declares that it is *implied by the bond.* This, together with the conclusion of law drawn by the court, and stated to the jury, that the United States having failed to discharge their obligation, the defendant was not answerable for the failure to discharge his, was clearly error.

5. The remaining instruction given by the court in lieu of the 5th instruction asked for by the plaintiffs, (Rec. p. 21,) presents a hypothetical case—what might have happened, rather than what did happen—and is otherwise objectionable as calculated to mislead the jury.

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